IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 159 OF 2005

Shri Zulfikar Ali,
presently lodged in
Aguada Central Jail,
Bardez, Goa. ... Applicant

versus

State of Goa
(Through Ld. P.P.) ... Respondent

Mr. P. P. Singh with Mr. T. George, Advocates for the Applicant.

Mr. S. N. Sardessai, Public Prosecutor for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 18TH AUGUST,2005.

P.C.:-

Heard Mr. P. P. Singh, learned Counsel appearing on behalf of the Applicant/A-2 in Sessions Case No.9 of 2003.

The said Accused has filed Criminal Appeal No.30 of 2005 before this Court and in the said Appeal has filed the present application for suspension of sentence and for his release on bail. It is conceded by Mr. Singh, learned Counsel

of the said Accused that the said Criminal Appeal No. 30 of 2005 will have to be treated as a revision application as no Second Appeal is maintainable under the provisions of the Code of Criminal Procedure, 1973.

The Applicant/A-2 was convicted and sentenced by the learned Adhoc Assistant Sessions Judge in Sessions Case No.9 of 2003 under Sections 342, 397 r/w Section 149 I.P.C. to undergo R.I. for 7 years and to pay a fine of Rs.1000/- under Section 397 I.P.C. and 2 months S.I. under Section 342 I.P.C. The said conviction and sentence have now been confirmed by the learned Sessions Judge, Margao in Criminal Appeal No. 47 of 2004 by common Judgment dated 8-6-2005. Admittedly, the Applicant/A-2 did not make any application for bail during the trial which was pending before the learned Assistant Sessions Judge for a period of over 2 years. It has been submitted that a bail application was filed before the Court of Sessions but was withdrawn on an understanding that the Appeal would be heard at an early date. However, the fact remains that at the stage of Appeal also the Applicant/A-2 chose not to seek bail before the learned Sessions Judge and it is for the first time that the Applicant/A-2 has filed the application under consideration at

the stage of revision and at the time when a sentence of imprisonment of 7 years R.I. has been confirmed against him by the learned Sessions Judge.

Mr. P. P. Singh, learned Counsel appearing on behalf of the Applicant/A-2 submits that the plea of alibi taken by the Applicant/A-2 by the production of pay slip has not been considered by both the Courts below. Mr. Singh has further contended that no recovery of any articles, the subject matter of offence alleged against the Applicant/A-2 and others was recovered at the instance of the Applicant/A-2, and being so the Applicant/A-2 would be entitled to be admitted on bail.

As already noted a conviction and sentence imposed against the Applicant/A-2 by the learned Assistant Sessions Judge has now been confirmed by the learned Sessions Judge, Margao. The submission made on behalf of the Applicant/A-2 will certainly be required to be considered at the stage of hearing the application for revision which as already stated was wrongly registered as Criminal Appeal No. 30 of 2005. Since the Applicant/A-2 was not on bail at any of the stages of trial or for that matter when the Appeal was filed and there is a confirmed conviction against the

Accused, I am not inclined to exercise the discretion and admit the Applicant/A-2 to bail. The Appeal No. 30 of 2005 which is now being treated as a revision application has to be certainly expedited.

With the above observations the application is hereby dismissed.

N. A. BRITTO, J.

RD.